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No. 07-1021

IN THE

# Supreme Court of the United States

JUNG BEA HAN,

*Petitioner,*

*v.*

GE CAPITAL SMALL BUSINESS FINANCE CORPORATION,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## BRIEF IN OPPOSITION

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## QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition where the Eleventh Circuit's Order Denying a Motion to Reinstate Appeal and a subsequent Order Denying a Motion for Reconsideration of the Order Denying Motion to Reinstate Appeal does not conflict with the decisions of this Court or a Court of Appeals, and Petitioner does not claim that the Eleventh Circuit's Orders implicate an important federal question that has not been settled by this Court.

## CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent, GE Capital Small Business Finance Corporation, is a Delaware corporation which is a wholly owned subsidiary of General Electric Capital Corporation. One hundred percent (100%) of the stock of GE Capital Small Business Finance Corporation is owned by General Electric Capital Corporation.

General Electric Capital Corporation is also a Delaware corporation which is a wholly owned subsidiary of General Electric Company. One hundred percent (100%) of the stock of General Electric Capital Corporation is owned by General Electric Company. General Electric Capital Corporation is not a publically traded stock. However, General Electric Company is a publically traded entity.

## TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTION PRESENTED | i |
| CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6 | ii |
| TABLE OF CONTENTS | iii |
| TABLE OF CITED AUTHORITIES | vi |
| INTRODUCTION | 1 |
| STATEMENT OF THE CASE | 1 |
| REASONS FOR DENYING THE PETITION | 3 |
| I. Factual and Procedural Background Leading Up To This Petition. | 5 |
| A. United States Bankruptcy Court for the Northern District of Florida. Case No. 00-4208-LMK | 5 |
| B. United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT | 5 |

*Contents*


| | | *Page* |
|---|---|---|
| C. | United States Bankruptcy Court for the Northern District of Florida, Pensacola Division Adversary Case Number 05-03012-MAM ..... | 6 |
| D. | United States District Court for the Northern District of Florida, Sitting in its Appellate Capacity Case Number 05-00404-RV-MD ..... | 7 |
| E. | Return to the United States Bankruptcy Court for the Northern District of Florida, Pensacola DivisionAdversary Case Number 05-03012-MAM ..... | 8 |
| F. | Return to United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT ..... | 10 |
| G. | United States Court of Appeals for the Eleventh Circuit Case Number 06-12505-JJ ..... | 11 |
| H. | Second Return to the United States Bankruptcy Court for the Northern District of Florida, Pensacola Division Adversary Case Number 05-03012-MAM ..... | 11 |

*Contents*

*Page*

I. Second Appeal to United States District Court for the Northern District of Florida, Sitting in its Appellate Capacity Case Number 06-00474-MCR-EMT ..... 12

J. Return to United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT ..... 12

K. Return to the United States Court of Appeals for the Eleventh Circuit Case Number 07-10349 ..... 13

L. United States Supreme Court ..... 13

II. No Compelling Reasons Have Been Stated in the Petition. ..... 13

CONCLUSION ..... 14

## TABLE OF CITED AUTHORITIES

*Page*

**Cases:**

*In Re: McDonald*, 489 U.S. 180, 109 S. Ct. 993, 103 L. Ed.2d 158 (1989) ..... 14

*NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498, 71 S.Ct. 453, 95 L. Ed. 479 (1951) ..... 4

*23 Moores Federal Practice*, § 510-33(4)(a) (Matthew Bender 3d Ed.) ..... 4

**Statute:**

11 U.S.C. § 362(k) ..... 6

**Rule:**

Sup. Ct. R. 10 ..... 1, 3

## INTRODUCTION

The Petitioner has presented no compelling reasons for his Petition for a Writ Certiorari to be granted. Pursuant to Sup. Ct. R. 10, this Court will only grant a petition for the grounds set forth in the rule. Specifically, Petitioner fails to demonstrate that the Eleventh Circuit's June 25, 2007 Order Denying Petitioner's prior Motion to Reinstate Appeal (the "Order") conflicts with the decisions of this Court or another Court of Appeals. Further, Petitioner fails to demonstrate that the Eleventh Circuit's Order relates in any way to an important federal question that has not been settled by this Court. In fact, the Petitioner, appearing *pro se*, has failed to make any attempt whatsoever to show any compelling reason that would constitute a sufficient ground to grant the Petition. Finally no legal authority has been cited by Petitioner to support his legal basis for the granting of the Petition. Therefore, the Petition should be denied.

## STATEMENT OF THE CASE

This Petition emanates from a course of litigious conduct by a *pro se* litigant who has had his day in court and has exhausted all post-judgment and appellate remedies available. This course of conduct has been so redundant, burdensome and harassing that the trial court actually sanctioned the Petitioner for filing redundant and frivolous post trial pleadings. To avoid further sanction, the Petitioner engaged in a continuing plan of forum shopping. In each instance thereafter, every lower court has denied the relief requested by the Petitioner. As a result of the forum shopping by the

Petitioner, the path of litigation leading to this Court is outlined below:

1. Bankruptcy Court Chapter 13 – Case Number 00-42086-LMK;

2. United States District Court for he Northern District of Florida – Case Number 04-00127-MCR-EMT;

3. Adversary Bankruptcy Case – Case Number 05-03012-MAM;

4. United States District Court for the Northern District of Florida, sitting in its appellate capacity – Case Number 05-00404-RV-MD;

5. United States District Court for the Northern District of Florida, sitting in its appellate capacity – Case Number 06-00474-MCR-EMT;

6. United States Court of Appeals for the Eleventh Circuit - Case Number 06-12505-JJ;

7. United States Court of Appeals for the Eleventh Circuit – Case Number 07-10349-F; and

8. Supreme Court of the United States – docket number 07-1021.

Each and every post-judgment motion and appeal sought to re-argue the underlying trial court's ruling. The Eleventh Circuit Order that is the subject matter of the Petition relates to the denial of Petitioner's Motion for Reconsideration of the Eleventh Circuit's prior Order Denying Petitioner's Motion to Reinstate Appeal after the appeal was dismissed. In light of the lengthy and protracted course of litigation, coupled with the fact that Petitioner had his day in court and has exhausted his post-judgment and appellate remedies, it is clear that no compelling reasons exist to grant the Petition.

## REASONS FOR DENYING THE PETITION

The Eleventh Circuit's Order does not conflict with the decisions of this Court or any Court of Appeals, nor does it implicate a federal question that has not been decided by this Court. Accordingly, the Petitioner has not carried his burden of demonstrating any "compelling reasons" for the Petition to be granted. Sup. Ct. R. 10.

The only arguments raised in the Petition relate to purported errors in docketing and case numbers related to the multiple proceedings commenced by the Petitioner in the various forums. There is no recitation of any compelling reason(s) to grant the Petition. To the contrary, the Petition evidences that the Petitioner is seeking multiple bites at the apple by seeking rehearing and/or reinstatement to appeals that have been dismissed. Petitioner is seeking to re-argue and re-try his case that was ruled upon at the trial level. Proof of this can be found in the Order being appealed and the motions filed relating thereto.

After a trial court ruling and an appeal thereof was dismissed, subsequent appeals were taken to the Eleventh Circuit which were also dismissed. Petitioner's Motion for Reconsideration before the Eleventh Circuit specifically stated in its conclusion that: "Appellant requests this Court to reverse the trial court, to vacate the final judgment and to remand this action for a trial on the merits. However, if it is possible, Appellant respectfully prays that this case be tried by this Honorable Court."

Based on the relief requested by Petitioner in his Motion for Reconsideration, it is clear that he was not seeking reversal of the denial of a Motion to Reinstate his appeal. To the contrary, Petitioner was seeking to reverse the underlying case on its merits. Thus, in reality, Petitioner is really seeking review of the trial court's ruling. This Court will not grant certiorari to review a decision that turns solely upon an analysis of facts, or to determine whether the evidence supports a judgment of a district court or an administrative agency. As to such issues, the Courts of Appeal are generally the courts of last resort. *NLRB v. Pittsburgh Steamship Co.*, 340 U.S. 498, 71 S.Ct. 453, 95 L. Ed. 479 (1951); *23 Moores Federal Practice*, § 510-33(4)(a) (Matthew Bender 3d Ed.)

## I. Factual and Procedural Background Leading Up To This Petition.

The filing of the Petition represent the Petitioner's attempt to obtain post judgment relief in 12 forums. The following is a brief chronological history of the case leading up to the filing of this Petition. It demonstrates the frivolity and repetitive nature of Petitioner's litigious course of conduct.

### A. United States Bankruptcy Court for the Northern District of Florida. Case No. 00-4208-LMK

Petitioner filed a Joint Petition under Chapter 13 of Title 11 with his wife on October 11, 2000. Thereafter, on July 12, 2001, the Bankruptcy Court entered an Order confirming the Debtors' Second Amended Plan. Notwithstanding the achievement of an Order of Confirmation, on February 23, 2004, based upon post-confirmation defaults by the Debtors, the underlying bankruptcy case was dismissed and closed.

### B. United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT

On April 12, 2004, Petitioner filed a lawsuit against Respondent in the United States District Court for the Northern District of Florida, Pensacola Division. The Complaint filed by Petitioner was dismissed with leave to amend on numerous occasions. With respect to Respondent's Motion to Dismiss the Third Amended Complaint, the District Court ruled, *inter alia*, that the

majority of the counts in the Third Amended Complaint should be dismissed for lack of jurisdiction. The District Court, on October 28, 2004, entered an order adopting a Report and Recommendation of the Magistrate Judge which dismissed, for lack of jurisdiction, the majority of counts in Plaintiff's Third Amended Complaint. The balance of the counts that sought damages under 11 U.S.C. § 362(k) were referred to the Bankruptcy Court for adjudication. At no time was the district court order of October 28, 2004 ever appealed, either on an interlocutory or final basis.

### C. United States Bankruptcy Court for the Northern District of Florida, Pensacola Division Adversary Case Number 05-03012-MAM

The Bankruptcy Judge, in the adversary proceeding, entered an order on July 12, 2005 which held that there remained three claims of Petitioner that required adjudication. The three claims all related to Petitioner's assertions that Respondent had violated the automatic stay in bankruptcy.

In response to these three remaining claims, Respondent file a Motion for Summary Judgment on May 19, 2005. On July 12, 2005, the Bankruptcy Court entered an order with respect to Respondent's Motion for Summary Judgment by granting in part and denying in part said Motion. More specifically, the Bankruptcy Court ruled that summary judgment was granted as to Count I, Count II and that portion of Count III as it related to post-confirmation payments. The Bankruptcy

Court denied the Motion as to Count III as it related to the pre-confirmation payments.

Thereafter, Respondent filed a Supplemental Motion for Summary Judgment as to the sole remaining open issue relative to Count III. On September 26, 2005, the Supplemental Motion for Summary Judgment filed by Respondent was granted in part and denied in part. The Bankruptcy Court ruled that Respondent did, in fact, violate the automatic stay by requiring payments from Petitioner's assets that were higher than the post-petition debt required. As a result, on September 26, 2005 the Court entered Final Judgment for damages in favor of Petitioner against Respondent in the amount of $400.00 in actual damages and $2,000.00 in punitive damage.[1]

### D. United States District Court for the Northern District of Florida, Sitting in its Appellate Capacity Case Number 05-00404-RV-MD

On October 25, 2005, Petitioner filed a Notice of Appeal respecting the Bankruptcy Court's Final Judgment with the United States District Court for the Northern District of Florida, Pensacola Division (sitting in its appellate capacity) seeking to appeal the Judgment of the Bankruptcy Court which had, in fact, ruled in Petitioner's favor. On December 27, 2005, the United

[1] Respondent has tendered payment of $2,400.00 to Petitioner on more than four separate occasions; however, Petitioner has returned to Respondent's counsel all tendered checks and to date, continues to refuse to accept Respondent's payment in full of said Final Judgment rendered in the Bankruptcy Court.

States District Court for the Northern District of Florida, Pensacola Division (in its appellate capacity) entered an Order dismissing with prejudice Petitioner's appeal of the Bankruptcy Court's Final Judgment.

### E. Return to the United States Bankruptcy Court for the Northern District of Florida, Pensacola DivisionAdversary Case Number 05-03012-MAM

Still not satisfied with the trial court's ruling (which was appealed and ultimately dismissed on appeal), Petitioner commenced a course of action of continually filing post-judgment motions with the Bankruptcy Court which ultimately resulted in an admonishment by the Bankruptcy Judge that any further filing of pleadings would result in a sanction against Petitioner. The pleadings leading up to the Court's warning were:

i. On November 28, 2005, Petitioner filed a Motion for Relief in the bankruptcy proceeding which, in effect, sought a rehearing of the Court's prior ruling. On December 5, 2005, the Bankruptcy Court entered an Order denying Petitioner's requested relief for the reasons set forth in Respondent's Response. Further, the Bankruptcy Judge in the adversary proceeding specifically stated in the December 5, 2005 Order that "Mr. Han has had his day in court. Between the U.S. District Court and this Court, all of the causes of action he raised had been ruled

upon. There is nothing that remains to be tried or reconsidered."

ii. Still not satisfied with the Court's final ruling, on December 12, 2005, Petitioner filed a further pleading entitled "Motion for Harmless Error and Motion for Stay of Judgment as to Multiple Claims" in the adversary proceeding. Once again, the Bankruptcy Court denied Petitioner's requested relief for the reasons raised in the Responses filed by Respondent. The Court's December 21, 2005 Order reiterated the same language; to wit: "Mr. Han has had his day in court. Between the U.S. District Court and this Court, all of the causes of action he raised had been ruled upon. There is nothing that remains to be tried or reconsidered."

iii. Still not satisfied, Petitioner filed a "Motion for Harmless Error" on January 3, 2006 which continued to request the same relief in his prior pleadings. Frustrated by Petitioner's continual post-judgment filings, the Bankruptcy Court entered an Order on January 11, 2006, once again denying Petitioner's request for relief and further ordering that "Plaintiff refrain from filing any further motions in this court regarding this adversary proceeding or sanctions will be imposed." The Order further warned Petitioner that

> any further filings with the Bankruptcy Court would result in the imposition of Rule 9011 sanctions in the amount of $500.00. Specifically, the Bankruptcy Judge stated in the January 11, 2006 order that:
>
> Despite the fact that Han appealed the Bankruptcy Court's final order to the District Court, he has now filed three post judgment motions in this Court. All of Han's postjudgment motions have contained virtually identical content and all three motions have been denied. Given these facts, plus the fact that the Court has already issued Han a warning against additional filings and informed him of the possibility of sanctions in its December 21, 2005 order, this Court will consider any additional filings by Han to be sanctionable under Rule 9011 and will penalize him $500.00 for the first such filing with additional penalties for any filings thereafter.

### F. Return to United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT

With the threat of sanctions and after being warned and admonished by the Bankruptcy Court, Petitioner sought further post-judgment relief by returning to and filing in the United States District Court for the Northern District of Florida, Pensacola Division, a

Motion to Reopen Case for Retrial and for Trial on March 14, 2006. Petitioner's motion sought the identical relief that had been sought on numerous occasions in the Bankruptcy Court which had resulted in the Bankruptcy Court admonishment and potential sanction. The District Court entered an Order on April 4, 2006 denying Petitioner's request for relief. This Order of the District Court denying Petitioner's Motion to Reopen Case for Retrial was the subject matter of Petitioner's first appeal to the Eleventh Circuit.

### G. United States Court of Appeals for the Eleventh Circuit Case Number 06-12505-JJ

With respect to Petitioner's first appeal to the Eleventh Circuit related to the April 4, 2006 Order Denying Motion to Reopen Case and Retrial, said appeal was dismissed on June 15, 2006 by Entry of Dismissal.

### H. Second Return to the United States Bankruptcy Court for the Northern District of Florida, Pensacola Division Adversary Case Number 05-03012-MAM

With the dismissal of Petitioner's first appeal to the Eleventh Circuit, Petitioner filed, in direct contravention of the warnings and admonition of the Bankruptcy Judge, a Motion to Reopen the adversary bankruptcy proceeding. On September 5, 2006, this Motion to Reopen was denied by the Bankruptcy Court and Petitioner was sanctioned with a fine of $500.00 to be paid to the Clerk of the Bankruptcy Court.

In further contravention of the Bankruptcy Judge's authority, Petitioner filed a Supplemental Motion to Reopen on September 11, 2006. On September 13, 2006, this Supplemental Motion to Reopen was also denied and a further sanction of $500.00 was entered by the Court. Thereafter, on September 26, 2006, Petitioner filed a Second Appeal respecting the Bankruptcy Court's Orders denying his Motions to Reopen.

**I. Second Appeal to United States District Court for the Northern District of Florida, Sitting in its Appellate Capacity Case Number 06-00474-MCR-EMT**

This second appeal to the United States District Court for the Northern District of Florida, sitting in an appellate capacity, was dismissed by order of the District Court entered December 21, 2006.

**J. Return to United States District Court for the Northern District of Florida, Pensacola Division Case Number 04-00127 MCR-EMT**

Running out of forums to file papers, on January 4, 2007, Petitioner filed a Motion for Rehearing in the original 2004 District Court case. The District Court entered an order on January 4, 2007 directing the clerk to return the Motion for Rehearing without filing and advised the Petitioner that the case was closed on 12/28/04 and that he should refrain from filing any further documents in this case.

### K. Return to the United States Court of Appeals for the Eleventh Circuit Case Number 07-10349

Immediately thereafter, Petitioner filed a Notice of Appeal to the Eleventh Circuit relating to the District Court's Order of January 4, 2007 denying rehearing since the case was closed. This second appeal to the Eleventh Circuit was dismissed on March 13, 2007. On April 4, 2007, Petitioner filed a Motion to Reinstate the Appeal which was denied on April 12, 2007. Thereafter, Petitioner filed a Motion for Reconsideration which was also denied on June 25, 2007. It is these most recent Orders related to the denial of Petitioner's Motion to Reinstate Appeal and Motion for Reconsideration that are the subject matter of the Petition.

### L. United States Supreme Court

The Petitioner has filed a direct appeal to this Court from the Eleventh Circuit. However, no compelling reason(s) have been stated in the Petition.

## II. No Compelling Reasons Have Been Stated in the Petition.

A. The only reasons stated in the Petition relate to application of various rules of procedure in various courts. The chronological events listed above clearly evidence three points. First, Petitioner has had his day in court and has exhausted all post-judgment and appellate remedies. Second, Petitioner has engaged in a course of conduct in multiple forums to circumvent the

threat of sanctions by the trial judge. Finally, all procedures in every court in which Petitioner has sought relief have been followed with particularity and there has been no departure whatsoever from any accepted and usual course of judicial proceedings.

B. Absent a clear demonstration of compelling reasons to grant the Petition, said Petition must be denied. In fact, extraordinary writs are drastic and extraordinary remedies to be reserved for extraordinary causes in which an appeal is clearly an inadequate remedy. *In Re: McDonald*, 489 U.S. 180, 109 S. Ct. 993, 103 L. Ed.2d. 158 (1989).

## CONCLUSION

Based on the foregoing, Petitioner has not established any compelling reason(s) for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

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